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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-765

DOUGLAS WARREN WEBSTER,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, A BODY CORPORATE AND POLITIC; WARREN H. BACON, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO; MRS. DAVID CERDA, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO; BERNARD S. FRIEDMAN, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO; MRS. LOUIS A. MALIS, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO; THOMAS J. NAYDER, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO; MRS. CAREY B. PRESTON, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO; MRS. WILLIAM L. ROHTER, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO; AND MRS. W. LYDON WILD, INDIVIDUALLY AND AS A MEMBER OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO,

Respondents.

DECIDED IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, NOS. 78-1978, 78-2032.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND OBJECTIONS TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

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TABLE OF CONTENTS.

	PAGE
Table of Cases	ii
Table of Statutes and Other Authorities	iii
Question Presented for Review	2
Statutes Construed	2
Statement of Facts	9
Argument	14
I. Webster Did Not Have a Constitutionally Protected Entitlement to Appointment to a Principalship	14
Introduction	14
A. Illinois Law Does Not Confer a Property Right Prior to Appointment to a Principalship	16
B. The Illinois Appellate Court Decision in *Maiter* v. *Chicago Board of Education* Is Not Dispositive of the Issue Involved in This Appeal	22
II. The Doctrine of Abstention Is Inapplicable	30
III. The Board of Education's Consideration of Events and Circumstances Resulting in Criminal Proceedings Against a Candidate for Principalship Is Appropriate in Its Determination of That Person's Fitness for the Position	32
Conclusion	34
Objections to Motion for Leave to File Brief Amicus Curiae in Support of Petition for Writ of Certiorari	1

Table of Cases.

Baggett v. Bullitt, 377 U. S. 360, 84 S. Ct. 1316 (1964) .. 31
Bishop v. Wood, 426 U. S. 341, 96 S. Ct. 2074 (1976) ..14, 15
Board of Education v. Johnson, 21 Ill. App. 3d 482, 315 N. E. 2d 634 (1974) 19
Board of Regents v. Roth, 408 U. S. 564, 92 S. Ct. 2074 (1972) 14, 15, 29
Board of Education v. Rockford Education Association, 3 Ill. App. 3d 1090, 280 N. E. 2d 286 (1972) 19
Board of Trustees v. Cook County Teachers Union, 62 Ill. 2d 470, 343 N. E. 2d 473 (1976) 19
Courtney v. Board of Education, 6 Ill. App. 3d 424, 286 N. E. 2d 25 (1972) 27, 28
Doud v. Hodge, 350 U. S. 485, 76 S. Ct. 491 (1956) ... 30
Elder v. Board of Education, 60 Ill. App. 2d 56, 208 N. E. 2d 423 (1965) 19
Favorite v. Board of Education of Chicago, 235 Ill. 314, 85 N. E. 402 (1908) 19
Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U. S. 324, 84 S. Ct. 1293 (1964) 31
Illinois Education Association v. Board of Education, 62 Ill. 2d 127, 340 N. E. 2d 7 (1975) 19
Lindblad v. Board of Education, 221 Ill. 261, 77 N. E. 450 (1906) 19
Lockport Area Special Education Cooperative v. Lockport Area Special Education Cooperative Association, 33 Ill. App. 3d 789, 338 N. E. 2d 463 (1975) 19
Maiter v. Chicago Board of Education, No. 77-423 (1st Dist., Oct. 10, 1979) 22-24, 27-31

Meredith v. Winter Haven, 320 U. S. 228, 64 S. Ct. 7 (1943) 30, 31
People ex rel. Cook v. Board of Education, 295 Ill. App. 41, 14 N. E. 2d 520 (1938) 25
People ex rel. Laist v. Lower, 251 Ill. 527, 96 N. E. 346 (1911) 26
People ex rel. Latimer v. Board of Education, 341 Ill. App. 554, 94 N. E. 2d 555 (1950) 26
People ex rel. Thomas v. Board of Education, 40 Ill. App. 2d 308, 188 N. E. 2d 237 (1963) 21
Perry v. Sindermann, 408 U. S. 593, 92 S. Ct. 2694 (1972) 14, 15
Richards v. Board of Education, 21 Ill. 2d 104, 171 N. E. 2d 37 (1960) 19, 20, 25
Siler v. Louisville & N. R. Co., 213 U. S. 175, 29 S. Ct. 451 (1909) 30
Stroh v. Casner, 201 Ill. App. 281 (1916) 19
Webster v. Redmond, 443 F. Supp. 670 (N. D. Ill. 1977) 10
Webster v. Redmond, 599 F. 2d 793 (7th Cir. 1979) 12, 28-30, 33
Wesclin Education Association v. Board of Education, 30 Ill. App. 3d 67, 331 N. E. 2d 335 (1975) 19
Wilson v. Board of Education of Chicago, 233 Ill. 464, 84 N. E. 497 (1908) 19

Table of Statutes and Other Authorities.

United States Constitution, Fourth Amendment .....Obj. 2
Title 42, United States Code, § 1983 2
Ill. Rev. Stat. (1977), ch. 122, § 21-23 26
Ill. Rev. Stat. (1977), ch. 122, § 34-8 .....16, 17, 19, 20

Ill. Rev. Stat. (1977), ch. 122, § 34-8.1 . . . . . 16, 17, 19
Ill. Rev. Stat. (1977), ch. 122, § 34-8.2 . . . . . 16, 17, 23, 28
Ill. Rev. Stat. (1977), ch. 122, § 34-18 16
Ill. Rev. Stat. (1977), ch. 122, § 34-83 . . . . . 12, 23, 25
Ill. Rev. Stat. (1977), ch. 122, § 34-84 . . . . . 16, 17, 21, 23, 27, 28, 30
Ill. Rev. Stat. (1977), ch. 122, § 34-85 . . . . . 16, 18, 20, 21, 27
Civil Service in Parks Act, Ill. Rev. Stat. (1977), ch. 24½, §§78 *et seq.* 24
Park Employees' and Retirement Board Employees' Annuity and Benefit Fund Systems Act, Ill. Rev. Stat. (1977), ch. 24½, §§ 114 *et seq.* 24
University Civil Service Systems Act, Ill. Rev. Stat. (1977), ch. 124½, § 38(b)(1) 24
Board of Fire and Police Commissioners Act, Ill. Rev. Stat. (1977), ch. 24, § 10.2.1-1 *et seq.* 24
Chicago Sanitary District Act, Ill. Rev. Stat. (1977), ch. 42, §§ 323 *et seq.* 24
Civil Service in Cities Act, Ill. Rev. Stat. (1977), ch. 24, §§ 10-1-1 *et seq.* 24
Otis Law (Laws 1917, p. 723) 24

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QUESTION PRESENTED FOR REVIEW.

Did Petitioner have a property right to be promoted to the principalship in question under state law which would require the Chicago Board of Education to afford him due process protections regarding its decision not to appoint him a principal?[1]

STATUTES CONSTRUED.

Illinois School Code, Ill. Rev. Stat. (1977), ch. 122:

§ 21-23

§ 21-23. **Suspension or revocation of certificate.** Any certificate issued pursuant to this Article may be suspended for a period not to exceed one calendar year by either the regional superintendent or State Superintendent of Education upon evidence of immorality, a condition of health detrimental to the welfare of pupils, incompetency, unprofessional conduct, the neglect of any professional duty or other just cause. Unprofessional conduct shall include refusal to attend or participate in, institutes, teachers' meetings, professional readings, or to meet other reasonable requirements of the regional superintendent or State Superintendent of Education. It shall also include neglect or unnecessary delay in making of statistical and other reports required by school officers. The regional superintendent or State Superintendent of Education shall upon

1. Additional, substantial grounds which would have required reversal of the judgment in petitioner's favor were not addressed by the Court of Appeals in light of its treatment of the case; e.g., the Board members having acted in good faith, they and the Board are immune from liability under 42 U. S. C. § 1983; a hearing was not required since material facts were not disputed by petitioner; awarding petitioner additional "compensatory damages" absent proof of any injury therefor was contrary to law.

receipt of evidence of immorality, a condition of health detrimental to the welfare of pupils, incompetency, unprofessional conduct, the neglect of any professional duty or other just cause serve written notice to the individual and afford the individual opportunity for a hearing prior to suspension. If a hearing is requested within 10 days of notice of opportunity for hearing it shall act as a stay of proceedings not to exceed 30 days. No certificate shall be suspended until the teacher has an opportunity for a hearing at the educational service region. When a certificate is suspended, the right of appeal shall lie to the State Teacher Certification Board. When an appeal is taken within 10 days after notice of suspension it shall act as a stay of proceedings not to exceed 60 days. Any certificate may be revoked for the same reasons as for suspension by the State Superintendent of Education. No certificate shall be revoked until the teacher has an opportunity for a hearing before the State Teacher Certification Board, which hearing must be held within 60 days from the date the appeal is taken.

§ 34-8

§ 34-8. **Powers and duties of general superintendent.** The general superintendent of schools shall prescribe and control, subject to the approval of the board, the courses of study, textbooks, educational apparatus and equipment, discipline in and conduct of the schools, and shall perform such other duties as the board may by rule prescribe. Appointments, promotions and transfers of teachers, principals, assistant and district superintendents and all other employees in the teaching force shall be made, sites shall be selected, schoolhouses located thereon and plans therefor approved, and textbooks and educational apparatus and equipment shall be adopted and purchased by the board only upon the recommendation of the general superintendent of schools or by a majority vote of the full

membership of the board and, in the case of textbooks, subject to Article 28 of this Act. The board may furnish free textbooks to pupils and may publish its own textbooks and manufacture its own apparatus, equipment and supplies.

§ 34-8.1

§ 34-8.1. **Principals.** Principals shall be employed to supervise the educational operation of attendance centers as the board shall determine necessary. Each principal shall assume administrative responsibility and instructional leadership, under the supervision of the general superintendent and in accordance with reasonable rules and regulations of the board, for the planning, operation and evaluation of the educational program of the attendance area to which he is assigned. He shall submit recommendations to the general superintendent concerning the appointment, retention, promotion and assignment of all educational personnel assigned to the attendance center.

Each principal shall hold a valid supervisory or administrative certificate issued by the board of education in accordance with standards established by the general superintendent with the approval of the board of education.

§ 34-8.2

§ 34-8.2. **Local Nominating Committees.** A. Before the general superintendent shall recommend or the board shall vote on the appointment of a principal, the general superintendent and board may obtain the nomination of a person or persons to fill the position of principal by a local nominating committee.

B. A local nominating committee, when authorized by board rules and regulations, may consider, interview and nominate only those persons for the position of principal who appear on the appropriate eligibility list prepared by the board of examiners or those principals who consent

to be considered for a transfer. The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs.

C. The board may adopt rules and regulations regarding the formation of and procedures to be followed by local nominating committees; these rules and regulations shall assure that at least 60% of the members of each committee shall be parents or guardians of children in the affected school.

§ 34-18

§ 34-18. **Powers of the board.** The board shall exercise general supervision and management of the public education and the public school system of the city, and shall have power:

* * *

8. Subject to the limitations in this Article, to prescribe the course and methods of study in the various schools and employ teachers and other educational employees and fix their compensation . . . .

§ 34-83

§ 34-83. **Board of examiners—Certificates—Examinations.** A board of 3 examiners shall examine all applicants required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. The board of examiners shall consist of the general superintendent of schools and 2 persons approved and appointed by the board of education upon the nomination of the general superintendent of schools. The board of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the general superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of

the general superintendent of schools and be open to public inspection. Members of the board of examiners shall hold office for a term of 2 years.

§ 34-84

§ 34-84. **Appointments and promotions.** Appointments and promotions of teachers, principals and other educational employees shall be made for merit only, and after satisfactory service for a probationary period of 3 years (during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the general superintendent of schools) appointments of teachers and principals shall become permanent, subject to: (1) termination by compulsory retirement at the age of 65 years; (2) the rules of the board concerning conduct and efficiency; and (3) removal for cause in the manner provided by Section 34-85.

When any teacher or principal who has been promoted to the position of assistant or district superintendent or a member of the board of examiners is relieved of the duties of such position, he shall be reinstated in the position from which he was promoted.

"Teachers and principals" as used in this article means all members of the teaching force except the general superintendent of schools, assistant and district superintendents and members of the board of examiners.

§ 34-85

34-85. **Removal for cause—Notice and hearing—Suspension.** No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34-84) be removed except for cause, and then only by a vote of a majority of all members of the board, upon written charges presented by the general superintendent of schools, to be heard by the

board or a duly authorized committee thereof. Written notice of such charges shall be served upon the teacher or principal not less than 20 nor more than 30 days before the date of hearing. If the employee cannot be found upon diligent inquiry, such notice and charges may be served upon him by mailing a copy thereof in a sealed envelope by prepaid certified mail, return receipt requested, to the employee's last known address. A return receipt showing delivery to such address at least 30 days prior to the date set for hearing shall constitute proof of service. The hearing shall be held and the decision rendered within 80 days from the date of service of the notice; provided however, that continuances of said hearing granted at the request of the teacher or principal shall not be included in computing this 80 day period. The hearing shall be public at the request of either the teacher or principal or the board. The teacher or principal shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense to the charges. Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges. The action and decision of the board as to the existence of reasons or causes for dismissal or removal shall be final unless reviewed as provided in Section 34-85b of this Act. Pending the hearing of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension.[2]

2. This section was substantially modified by Public Act 80-1308, effective August 7, 1978 to include a new hearing procedure; however, the provision that "no teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34-84) be removed except for cause" has been retained.

No principal appointed by the board of education shall after serving the probationary period of 3 years specified in Section 34-84 be reclassified to a lower position or administrative grade on his or her principal's certificate unless reasonable advance notice is given in writing of the proposed reclassification. The term "reclassify" means a demotion or reduction in rank from one position to another for which a lower salary is paid.

Within 10 days of receipt of such notice, the principal may request and receive a private hearing with the board to discuss the reasons for the proposed reclassification. If the principal is not satisfied with the results of the private hearing, he or she may, within 5 days thereafter, request and receive a public hearing on the proposed reclassification. The principal may be represented by counsel at any private hearing or public hearing conducted under this Section. If the board decides to proceed with the proposed reclassification, it shall give the principal written notice of its decision within 15 days of the private hearing or within 15 days of the public hearing held under this Section, whichever is later. The decision of the board thereupon becomes final.

Nothing in this Section prohibits a board from ordering lateral transfers of principals to positions of similar rank and equal salary.

STATEMENT OF FACTS.

Petitioner's statement of the facts of this case is deficient. Some of the significant deficiencies are as follows:

Petitioner relates that the attorney for the Board of Education, who was present during the executive session of that Board, ". . . told the Board that Webster had gotten off (the criminal charge) on a 'technicality'." (P. 9)[3] No such finding of fact was made and the record simply does not support that statement.

Douglas Warren Webster, plaintiff, is presently employed by the Board of Education of the City of Chicago, hereinafter sometimes referred to as "Board," as an elementary school teacher at the Whittier School. On January 23, 1971, plaintiff was arrested on a state charge of theft. There had been an armed robbery of the Ericksonn Company, a jewelry store, on January 15, 1971. A police investigator conducted an investigation of that robbery. On January 23, 1971, he interviewed Johnnie Flournoy and obtained certain information concerning the participants in the jewelry store robbery and the disposition of the stolen property. Flournoy admitted that he had participated in the planning, execution and disposal of the property taken in the robbery. He implicated others as having participated, which included Raymond Daniels. Flournoy related that he and Daniels contacted a person that Daniels knew by the name of Weber and met with Weber the same night as the robbery for disposal of the stolen property. Flournoy furnished Weber's telephone number, which was unlisted, but it was subsequently learned to be the telephone number of Douglas Webster, 6501 South Crandon, Apartment 17A, Chicago, Illinois, the home address of plaintiff.

3. "P." refers to the Petition for Writ of Certiorari filed with this Court.

'At the time of his arrest, the police searched plaintiff's apartment. As a result of that search the police seized certain rings which had been found in plaintiff's clothes. One of the rings was highly identifiable. It was identified by the police as having been taken in the robbery since it was the jewelry store owner's personal wedding band which had been personally made by him. It was found in plaintiff's coat in a small manila envelope, together with another ring, which envelope type is commonly used in the jewelry business. There was writing on the front of the envelope which read: "Tony, clean and file prongs." A comparison of plaintiff's explanation regarding his possession of that stolen ring at the time of his arrest and the testimony of Raymond Daniels, the person from whom he says he received the ring, reveals its total lack of credibility.

While the trial court made no specific findings as to his explanation for his possession of the stolen ring, the trial court's statement that plaintiff had a ". . . brief brush with crime . . ." reinforces the conclusion that his explanation was indeed deemed by the trial court to be contrived and incredulous. *Webster,* 443 F. Supp. at 677 (P. 11a).

In addition, the trial court related that plaintiff had ". . . filed a motion to suppress *the evidence against him* on the ground that it had been taken from his home by an unconstitutional search. The motion was heard, and a judge ruled that *the evidence the state was going to use against Webster* had been taken from his home by an unreasonable search and seizure in violation of his constitutional rights." (Emphasis added.)

The record, in addition, reveals the trial court's following findings of fact:

* * * * *

"12. Prior to this, (the executive session of the Board held on January 14, 1972) on January 13, 1972, the attorney for the Board received a memorandum from the Assistant Attorney detailing plaintiff's arrest on January 23, 1971 for the offense of receiving property which had

been taken in an armed robbery of the Erichsonn (sic) Company jewelry store at 10 South Wabash Avenue in the City of Chicago on January 15, 1971. The memorandum, consisting of 13 typewritten pages, reviewed the details of that arrest, the return of the indictment, the motion to suppress evidence, the newspaper reactions to the events of January 23, 1971, and summarized the entire subject of the incident involving plaintiff, and which had led to his suspension as a teacher.

"At the time this memorandum was received, there was in the files of the attorney for the Board, a certified copy of the indictment that had been returned against plaintiff, a copy of a 73-page transcript of the proceedings before Judge Wilson on March 5, 1971, and various communications and memoranda to the Deputy Superintendent of Schools from the Chief of Security of the Board of Education, concerning plaintiff's arrest.

"The office of the attorney for the Board also had a complete file of the incidents that occurred between plaintiff's arrest on January 23, 1971 and his reinstatement as a teacher on August 26, 1971, including the inability of the personnel division of the Board in obtaining testimony of witnesses necessary to proceed with disciplinary action against plaintiff for conduct unbecoming a teacher, a charge brought about by his arrest, indictment and proceedings in the Criminal Division of the Circuit Court of Cook County

* * * * *

"14. After the Deputy Superintendent referred to plaintiff's arrest, and the incidents in connection therewith, the attorney for the Board supplemented the references. Either at the time he started, or by the time he finished speaking, he assured members of the Board that his office had in its files the documents necessary to support what the Deputy Superintendent had stated and what he had supplemented with his remarks."

* * * * *

There were no allegations in any of plaintiff's four complaints that the information upon which a majority of the Board relied

in voting against his promotion to principal was, in fact, false. The third and last amended complaint was filed after substantial discovery was taken by plaintiff and after the entry of an extensive and substantial stipulation of facts between the parties, all of which considered together revealed the totality of the information available to the Board relating to Webster.

Nor were there any allegations in any of the complaints filed that a hearing, or any other due process guarantees, were required of the Board of Examiners. Neither the Board of Examiners nor any of its individual members were made parties.[4] In that regard the trial court found:

> "Plaintiff still holds this certificate and is on the principals' eligibility list maintained by the Board of Education. His certificate has never been questioned; and his right to hold that certificate has not been adversely affected by any action or ruling of the Board of Education, or any of its subsidiary agencies."

Webster, 599 F. 2d at 799 (P. 24a).

While the trial court related that ". . . Webster was denied the promotion only because he was once arrested, indicted for a felony, but never convicted" and plaintiff likewise so asserts, such was not the case (P. 4a and 9, respectively). The Court of Appeals found from the record that:

> "Rather, the fact of and *circumstances surrounding the arrest and indictment* were taken into consideration by the Board. At any rate, there would seem to be a difference between an absolute disqualification based on the mere fact of arrest and *consideration of events and circumstances leading up to and surrounding an arrest and subsequent indictment*. Since presumably such events and circumstances in and of themselves could be considered if they had not eventuated in an arrest and indictment, the occurrence of an arrest does not itself render such consideration impermissible." (Footnote) Thus, for example, the

4. The General Superintendent of Schools was named a defendant; while he is also Chairman of the three-member Board of Examiners, he was not named defendant in that capacity. (Chapter 122, Section 34-83, Illinois Revised Statutes, 1977.)

> fact that stolen property was found in Webster's possession would remain the same whether he was arrested or not. And the probativeness of this fact remains the same regardless of its exclusion from evidence in a criminal proceeding for Fourth Amendment policy reasons. (Emphasis supplied.)

Webster, 599 F. 2d at 802.

The material facts revealed to the Board by its administrators and attorney, and upon which its members relied, were essentially matters of public record or gleaned from other records of public agencies, and were undisputed by plaintiff.

ARGUMENT.

I.

WEBSTER DID NOT HAVE A CONSTITUTIONALLY PROTECTED ENTITLEMENT TO APPOINTMENT TO A PRINCIPALSHIP.

Introduction.

This case involves a claim of denial of due process by a person who was declared eligible for a principal's position by virtue of the award of a certificate which is a prerequisite to any appointment to such position in the Chicago public school system. Webster claims that he has a valuable property right in his principal's certificate and that he is entitled to appointment to a principalship in the Chicago public school system. Having a principal's certificate, which merely makes a person eligible for appointment as a Chicago school principal, clearly does not constitute a recognizable property interest under Illinois law, and Webster did not have an entitlement to such position prior to appointment, as the Seventh Circuit Court of Appeals correctly held. The petition for writ of certiorari represents an attempt to substantially expand and distort the well-established holdings of this Court with regard to property interests in an employment context already clearly defined in *Board of Regents* v. *Roth,* 408 U. S. 564, 92 S. Ct. 2074 (1972); *Perry* v. *Sindermann,* 408 U. S. 593, 92 S. Ct. 2694 (1972); and *Bishop* v. *Wood,* 426 U. S. 341, 96 S. Ct. 2074 (1976). These cases involved claims of rights to continued employment, rather than the hopes and expectations of promotion to a higher position as are present in this case. Property interests are defined in *Roth* as follows:

> "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are

> defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." 408 U. S. at p. 577.

In *Sindermann* the Court further defined a property right in employment as follows:

> "A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing." 408 U. S. at 601.

Finally, in *Bishop* v. *Wood,* the Court reaffirmed the factors to be considered in the determination of such a right:

> "A property interest in employment can, of course, be created by ordinance, or by an implied contract. In either case, however, the sufficiency of the claim of entitlement must be decided by reference to state law." 426 U. S. at 344.

It is clear that the law of Illinois does not recognize the hopes and expectations of a promotion to a higher position as a property interest, nor does it recognize an entitlement to a principalship (or to any other employment within the school system) prior to actual appointment. Judge Philip W. Tone, then of the United States District Court, correctly concluded that "[t]he expectation or hope of a promotion is not a property right . . ." in denying Webster's motion for a preliminary injunction in this case. Therefore, his failure to receive an appointment as a principal is not protected by the due process clause of the Fourteenth Amendment (*Board of Regents* v. *Roth,* 408 U. S. at 577). Applicable portions of the Illinois School Code (Ill. Rev. Stat., ch. 122) which deal with principalships do not indicate that Webster has any such property right under state law. The Court of Appeals for the Seventh Circuit correctly interpreted the applicable state law in this case, consistent with this Court's holdings in the *Roth, Sindermann* and *Bishop* cases.

A. Illinois Law Does Not Confer a Property Right to Appointment to a Principalship.

An analysis of Illinois law relating to teachers and principals reveals that no property right attaches to Webster's certificate prior to his appointment as a principal, and clearly shows that the Board of Education has discretion in appointing teachers and principals.

Appointments of school principals in the Chicago public schools are made solely by the Board of Education, upon the recommendation of the General Superintendent of Schools, from those candidates who have successfully passed the principals' examination, who are issued principal's certificates and who are deemed fully qualified for the position by the Board in the exercise of its members' discretion. The powers of the Board and the General Superintendent relating to the appointment and employment of principals are set forth in Sections 34-8, 34-8.1, 34-8.2, 34-18, 34-84 and 34-85 of The School Code (Ill. Rev. Stat. ch. 122, § 34-1, *et seq.*)

Section 34-18 of The School Code provides as follows:

> "Powers of the board. The board shall exercise general supervision and management of the public education and the public school system of the city and shall have power:
>
> * * * * *
>
> "Subject to the limitations in this Article, to . . . employ teachers and other educational employees and fix their compensation;
>
> * * * * *
>
> "The specifications of the powers herein granted are not to be construed as exclusive, but the board shall also exercise all other powers that may be requisite or proper for the maintenance and development of a public school system, not inconsistent with the provisions of this Code which apply to all school districts."

Section 34-8 of The School Code provides in pertinent part:

> "Appointments, promotions and transfers of teachers, principals, assistant and district superintendents and all other employees in the teaching force shall be made, . . . by the board only upon the recommendation of the general superintendent of schools or by a majority vote of the full membership of the board. . . ."

Section 34-8.1 provides that "[p]rincipals shall be employed to supervise the educational operation of attendance centers as the board shall determine necessary."

Section 34-8.2 of The School Code, which became effective October 1, 1977,[5] provides as follows:

> "A. Before the general superintendent shall recommend or the board shall vote on the appointment of a principal, the general superintendent and board may obtain the nomination of a person or persons to fill the position of principal by a local nominating committee.
>
> "B. A local nominating committee, when authorized by board rules and regulations, may consider, interview and nominate only those persons for the position of principal who appear on the appropriate eligibility list prepared by the board of examiners or those principals who consent to be considered for a transfer. The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs.
>
> "C. The board may adopt rules and regulations regarding the formation of and procedures to be followed by local nominating committees; these rules and regulations shall assure that at least 60% of the members of each committee shall be parents or guardians of children in the affected school."

Section 34-84 governs the probationary period and tenure of teachers and principals, as follows:

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5. Prior to this legislative enactment, the Board had adopted and implemented a policy which, in effect, was essentially the same.

> "Appointments and promotions of teachers, principals and other educational employees shall be made for merit only, and after satisfactory service for a probationary period of 3 years (during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the general superintendent of schools) appointments of teachers and principals shall become permanent, subject to: (1) termination by compulsory retirement at the age of 65 years; (2) the rules of the board concerning conduct and efficiency; and (3) removal for cause in the manner provided by Section 34-85. . . ."

Finally, Section 34-85 provides as follows regarding removal for cause after the probationary three-year period:

> "No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34-84) be removed except for cause, and then only by a vote of a majority of all members of the board, upon written charges presented by the general superintendent of schools, to be heard by the board or a duly authorized committee thereof. . . ."[6]

Thus, the Illinois legislature has granted the Board of Education express statutory authority and discretion in the appointment and employment of teachers and principals after they receive their certification. Nothing in The School Code indicates that such employees are to be automatically appointed in "rubber-stamp" fashion once they become certificated, as Webster suggests.

The Board of Examiners, which is an entity separate from the Board of Education, issued a principal's certificate to Webster that qualified him for possible appointment by the Board of Education. The School Code makes it clear that the discretionary power to appoint and promote teachers and principals

6. This section was substantially modified by Public Act 80-1308, effective August 7, 1978; however, the provision that "no teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34-84) be removed except for cause" has been retained.

rests solely with the Board of Education (Sections 34-8, 34-8.1). The discretionary power to appoint principals is broad and non-delegable, *Lindblad* v. *Board of Education,* 221 Ill. 261, 271, 77 N. E. 450 (1906); *Elder* v. *Board of Education,* 60 Ill. App. 2d 56, 68, 208 N. E. 2d 423 (1965). Illinois courts of review have consistently held that the statutory power of the Board of Education to adopt and implement policy for the control and management of the schools is "ample and full' and that courts should refrain from interfering with or substituting their judgment for the exercise of statutory discretion by the Board. *Richards* v. *Board of Education,* 21 Ill. 2d 104, 110, 171 N. E. 2d 37 (1960); *Favorite* v. *Board of Education of Chicago,* 235 Ill. 314, 85 N. E. 402 (1908); *Wilson* v. *Board of Education of Chicago,* 233 Ill. 464, 470, 84 N. E. 497 (1908).

Illinois courts have acknowledged the discretionary powers of boards of education in appointing teachers and principals and have held such powers to be nondelegable. *Board of Trustees* v. *Cook County Teachers Union,* 62 Ill. 2d 470, 476, 343 N. E. 2d 473 (1976); *Illinois Education Association* v. *Board of Education,* 62 Ill. 2d 127, 130-131, 340 N. E. 2d 7 (1975); *Lindblad* v. *Board of Education,* 221 Ill. 261, 271, 77 N. E. 450 (1906); *Lockport Area Special Education Cooperative* v. *Lockport Area Special Education Cooperative Association,* 33 Ill. App. 3d 789, 338 N. E. 2d 463 (1975); *Wesclin Education Association* v. *Board of Education,* 30 Ill. App. 3d 67, 76, 331 N. E. 2d 335 (1975); *Board of Education* v. *Johnson,* 21 Ill. App. 3d 482, 315 N. E. 2d 634 (1974); *Board of Education* v. *Rockford Education Association,* 3 Ill. App. 3d 1090, 1093, 280 N. E. 2d 286 (1972); *Elder* v. *Board of Education,* 60 Ill. App. 2d 56, 68, 208 N. E. 2d 423 (1965); *Stroh* v. *Casner,* 201 Ill. App. 281, 286 (1916).

Webster claims, contrary to the statutes and decisions cited above, that the Board could exercise no discretion in the matter of his appointment and that therefore he had a property

interest in and entitlement to the position. If this contention were correct, Section 34-8 of The School Code which provides that the Board of Education shall make such appointments would be meaningless, along with the due process requirements attained upon completion of the three-year probationary period specified in Ill. Rev. Stat., ch. 122, § 34-85. A similar purported legal right to automatically obtain employment on a teacher's certificate was succinctly vitiated by the Illinois Supreme Court as follows:

> "The fact that plaintiff has a life certificate does not guarantee him employment, nor compel any particular school board to hire him, nor does it mean that he is entitled to employment at a particular salary, or entitled to pay raises, regardless of his compliance with lawful regulations. . . ." *Richards* v. *Board of Education,* 21 Ill. 2d 104, 111, 171 N. E. 2d 37 (1960).

Webster's principal's certificate merely constituted a prerequisite which made him eligible for an appointment to a principalship. It is analogous to a diploma or a teacher's certificate which likewise qualify a person but do not guarantee or afford a right to such employment. A certificate, like a diploma, is a recognition that the candidate has successfully passed the required examination and is found eligible for certain employment. No Illinois case of which we are aware has ever held that an applicant with a diploma or similar qualifying certificate has a property interest in certain employment. It would be absurd to conclude that every person with a teacher's or principal's certificate has an absolute right to a position protected by the due process clause of the Fourteenth Amendment, particularly in light of the Illinois statutory scheme which does not make appointment automatic upon the granting of a certificate.

Under Section 34-85 of the Illinois School Code, during the three-year probationary period after appointment to a principalship, the employee may be dismissed or discharged by the Board upon the recommendation of the General Superintendent with the only requirement being a written statement of reasons. It is

only after appointment and completion of three years of satisfactory service that a principal must be afforded a hearing prior to possible dismissal for cause. (Section 34-85; *People ex rel. Thomas* v. *Board of Education,* 40 Ill. App. 2d 308, 316-317, 188 N. E. 2d 237 (1963). No requirement for a hearing exists under Illinois law prior to the expiration of the probationary period. The Court of Appeals correctly noted the absurdity of Webster's contention on appeal in view of this provision of the Illinois School Code (599 F. 2d 793, 800 (7th Cir. 1979)), stating as follows in its opinion:

> "Thus a probationary teacher or principal may be discharged or dismissed without a hearing. *People ex rel. Thomas* v. *Bd. of Ed. of City of Chicago,* 40 Ill. App. 2d 308, 317, 188 N. E. 2d 237, 242 (1963) ('There is no doubt that under sections 34-84 and 34-85 of the School Code a hearing in connection with a probationary discharge is not required.'). This probationary period does not begin until the actual appointment from an eligibility list. *Id.*
>
> "If Webster is correct in his contention, given the statutory gloss discussed above, it would mean that although the Board could have promoted Webster and then dismissed him without a hearing, the Board could not refuse to promote him without a hearing. Put differently, if Webster were to prevail on this point, it would mean that he would be entitled to a hearing if not promoted, but if promoted he would not be entitled to a hearing prior to dismissal. He would have the rights of a tenured, permanent principal before promotion but after promotion he would lose these rights for three years. A construction leading to such an absurd result cannot be correct, and the Illinois courts have said as much by refusing to count pre-appointment time served by temporary employees toward fulfillment of the probationary period."

B. The Illinois Appellate Court Decision in Maiter v. Chicago Board of Education Is Not Dispositive of the Issue Involved in This Appeal.

Webster places almost total reliance upon an Illinois Appellate Court decision in the case of *Maiter* v. *Chicago Board of Education,* No. 77-423 (1st Dist., Oct. 10, 1979), rendered subsequent to the Court of Appeals' decision in the instant case, as support for his position. The Court of Appeals' opinion in this case was rendered after the completion of the briefing schedule and oral argument in *Maiter,* and *Webster* and *amicus curiae* Chicago Principals Association advanced the same arguments below that are now presented in the Petition for Writ of Certiorari. After the Illinois Appellate Court's opinion in *Maiter* was issued, Webster moved for recall of the mandate and for reconsideration in the Court of Appeals for the Seventh Circuit and moved the District Court to vacate the judgment orders and to transmit the mandate and record. The Court of Appeals denied the former motion and the District Court has not ruled upon the latter motion as of the time of this writing.

Webster erroneously asserts that *Maiter* is inconsistent with the holding of the Court of Appeals herein which found that he was not deprived of any constitutionally protectible property interest. The Board of Education's position is that *Maiter* was wrongly decided and has timely filed a petition for leave to appeal to the Supreme Court of Illinois and, therefore, this Honorable Court is being asked to review the instant case on the basis of a state decision that is not necessarily final. More importantly, however, notwithstanding the Board of Education's appeal of the *Maiter* case, said case is clearly not dispositive of the issue presented herein.

In *Maiter,* members of the Chicago Principals Association who either accepted appointments, had been offered appointments or were on the most recent principals' eligibility list awaiting appointment brought suit against the Board of Education challenging the procedures used by the Board by which it obtains, from a local school nominating committee, the nomination of a certified candidate to fill a principalship vacancy. The suit thus challenges the system of community input set forth in Section 34-8.2 of The School Code, which became effective October 1, 1977, whereby a nominating committee comprised of community members and parents interviews candidates on the eligibility lists when a principalship vacancy arises at a school and nominates a person or persons of its choice upon which the General Superintendent and Board act, either following the committee's recommendation or rejecting it. This was the procedure followed in Webster's case, which has not been challenged by him. In fact, Webster has relied on his nomination by a local nominating committee to support his position in the case at bar. He contends here, however, that the Board may only appoint in rank order from the eligibility list and that therefore he had an automatic right to appointment which rose to the level of a constitutional entitlement. The trial court rejected the rank order argument and upheld the system of community input in the *Maiter* case, the plaintiffs succeeded in reversing that judgment on appeal to the Illinois Appellate Court, and the Board of Education has filed a petition for leave to appeal with the Illinois Supreme Court.

The Board's position is that the "for merit only" language in Section 34-84 of The School Code does not refer to Section 34-83, nor is the term "merit" defined in the statute in any way. Section 34-84 has been amended twice and no changes or additions have been made to the "merit" language, even though Section 34-8.2 was recently enacted sanctioning the system of community input for principalship appointments. Thus, if the "merit" provisions in Section 34-84 meant rank order appointment as plaintiff contends, it would be patently inconsistent with Section 34-8.2. Obviously, since Section 34-84 has not been amended, the "merit" language must be construed as compatible with the selection process established in Section 34-8.2.

Further, the failure of the Illinois legislature to provide "rank order" requirements in any of the statutes which provide for eligibility examinations, eligibility lists or the appointments of principals by the Board of Education becomes even more significant when compared with other statutes. Where the legislature has intended to require governmental agencies to appoint persons to positions based solely on their score on an eligibility examination, the statutes governing the appointments have provided for that result in clear, unmistakable terms. Examples of such explicit statutes are as follows: Civil Service in Parks Act, Ill. Rev. Stat., ch. 24½, §§ 78 *et seq.*; Park Employees' and Retirement Board Employees' Annuity and Benefit Fund Systems Act, Ill. Rev. Stat., ch. 24½, §§ 114, *et seq.;* University Civil Service Systems Act, Ill. Rev. Stat., ch. 124½, § 38(b)(1); Board of Fire and Police Commissioners Act, Ill. Rev. Stat., ch. 24, §§ 10.2.1-1 *et seq.;* Chicago Sanitary District Act, Ill. Rev. Stat. ch. 42, §§ 323 *et seq.;* and Civil Service in Cities Act, Ill. Rev. Stat. ch. 24, §§ 10-1-1 *et seq*. In all of these statutes, the legislature clearly intended that there be some form of rank order appointments and manifested this intention in clear, unmistakable language. The Illinois School Code contains no language requiring any form of rank order appointment. It must therefore be concluded that the legislature intended to give the Board of Education the right to appoint principals upon a basis other than rank order, contrary to the *Maiter* decision.

Webster discusses the "Otis Law" (Laws 1917, p. 723) at length in his Petition in an attempt to convince this Court that the words "for merit only" somehow take away all discretion of the Board of Education in the appointment of principals. As the Board of Education respondents have shown, both Illinois statutory and case law indicate just the opposite. Prior to 1917, the duty of examining persons offering themselves as candidates for principalships was delegated to the Board of Education. Following enactment of the Otis Law, the duty of providing examinations for appointment of teachers and principals and of

preparing all necessary eligibility lists was vested in the Board of Examiners. (Ill. Rev. Stat., ch. 122, § 34-83).

Respondents fully agree that pursuant to the Otis Law and Section 34-83 of The School Code, the Board of Examiners has the exclusive power to examine candidates for certificates and to prepare eligibility lists. Respondents, however, disagree with the further contention of Webster that once a candidate becomes certificated, the Board of Education has no discretionary power regarding his/her actual appointment. The Illinois Supreme Court has made it clear that possession of a certificate is not equivalent to automatic appointment, contrary to Webster's claim. Said court stated as follows in *Richards* v. *Board of Education,* 21 Ill. 2d 104, 111, 171 N. E. 2d 37:

> "The fact that plaintiff has a life certificate does not guarantee him employment, nor compel any particular school to hire him, nor does it mean that he is entitled to employment at a particular salary, or entitled to pay raises, regardless of his compliance with lawful regulations concerning such pay raises."

Webster bases his contention that the Board of Education is without discretionary power in the appointment of principals upon the Illinois case of *People ex rel. Cook* v. *Board of Education,* 295 Ill. App. 41, 14 N. E. 2d 520 (1938). A reading of said case, however, reveals that it was confined to a much narrower issue and that its holding is not applicable to the issues involved in this case. The suit challenged the authority of the Board of Examiners to make rules concerning the principal's examination and to change the examination requirements without the approval of the Board of Education. The Court held that the power to make rules governing or controlling the examination of candidates is vested in the Board of Examiners. The *Cook* case was concerned solely with the issue of whether the control of examinations lies within the jurisdiction of the Board of Education or the Board of Examiners. The court did not go beyond the matter of examination and did not discuss the Board

of Education's power concerning actual appointment of principals.

The contention of Webster that once a person becomes certificated, he/she automatically possesses the absolute right to appointment to a principalship can be carried to a very illogical conclusion. Under such a theory, once a person becomes certificated he would have the right to a principalship no matter what crimes he had committed or misconduct in which he had engaged between the time of certification and actual appointment unless there is a due process hearing which is not even required by Illinois law for the first three years after a candidate is appointed. There is no provision in Article 34 of The School Code, which only governs the Chicago Board of Education, as there is in Article 21 governing all other school districts (Ill. Rev. Stat., ch. 122, § 21-23), which gives said Board or the Board of Examiners the power to revoke a certificate once it has been issued. Therefore, the only alternative in such a case is for the Board of Education to decline to appoint the candidate. Further, the statutes discussed above governing the appointive powers of the Board of Education also support this view.

In the case at bar, plaintiff already had been issued a principal's certificate when his arrest and indictment occurred. Since there is no statutory authority in Article 34 of The School Code for revocation or withdrawal of a certificate, the Board of Examiners was powerless to take any action with regard to plaintiff. *People ex rel. Laist* v. *Lower*, 251 Ill. 527, 96 N. E. 346 (1911); *People ex rel. Latimer* v. *Board of Education*, 341 Ill. App. 554, 94 N. E. 2d 555 (1950). Once said body had made its recommendation to the Board and a certificate was issued, the Board of Examiners had no authority to take any action with regard to plaintiff based on his conduct after issuance of the certificate. Therefore, only the Board of Education could

take action.[7] A person who is appointed a principal must serve a probationary period of three years, and under Illinois law a right to a hearing regarding dismissal does not attach until the probationary period is over (Ill. Rev. Stat., ch. 122, §§ 34-84 and 34-85). Thus, the Board of Education had the discretionary power to decline to appoint Webster, and he was not entitled to a hearing on the matter under Illinois law. Plaintiff clearly had no "legitimate claim of entitlement" to appointment by virtue of his possession of a certificate. *Board of Regents* v. *Roth*, 408 U. S. 564, 92 S. Ct. 2074 (1972).

Webster also cites *Courtney* v. *Board of Education*, 6 Ill. App. 3d 424, 286 N. E. 2d 25 (1972), as establishing one of the bases of his property right contention. Said case, however, clearly does not in any way support such a contention. The plaintiffs in that case were issued principal's certificates in 1967 and had not yet been appointed as principals. They alleged that the Board acted in an arbitrary and discriminatory manner in not appointing them before appointing persons whose certificates were issued in 1970. The trial court granted the defendants' motion to dismiss, and the sole issue on appeal was whether the complaint was properly dismissed. The Illinois Appellate Court held that the allegations of the complaint were sufficient and remanded the case to allow the plaintiffs an opportunity to prove the issues of fact raised. The court specifically stated as follows in its opinion: "We have not been concerned here with the verity of the allegations in the complaint, and we express no opinion thereon." (6 Ill. App. 3d at 427)

In any event, the pending *Maiter* case, whatever its final disposition, will decide the question of rank order appointment

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7. It should be noted that Section 4-24 of the Rules of the Board of Education provides in pertinent part as follows:

> "(b) Certificates of Principals shall expire at the end of six years from the date of examination unless the holder shall have been assigned under such certificate as principal or to some position equal or superior to the position of principal."

and interpret the "merit" language in Section 34-84. This Court should therefore not involve itself in considering such issues since plaintiff neither alleged in any of his complaints nor proved that his rights had been violated by the Board not having appointed him a principal based on his rank in the principal eligibility list. The *Maiter* case has not and will not decide the issue presented herein, which is whether Webster or any other candidate with a principal's certificate has an entitlement to be appointed as a principal under state law.

A reading of *Maiter* reveals that the Illinois Appellate Court misapprehended the Court of Appeals' decision in *Webster*. As the Court of Appeals correctly pointed out (599 F. 2d at 801, fn. 12) in *Maiter* the system of community input in the nomination of a certificated candidate to fill a principalship vacancy was challenged. It was that procedure which had been followed in Webster's case, and which was not challenged by him. As the Court of Appeals correctly concluded ". . . the issue involved (in *Maiter*) is priority of consideration as opposed to entitlement to position." (599 F. 2d at 801, fn. 12). In concluding thus the court relied upon *Courtney* v. *Board of Education,* 6 Ill. App. 3d 424, 286 N. E. 2d 25 (1972), about which it stated:

> "But this decision does not state that any given person possessing a certificate is entitled to a principalship by virtue of reaching the top of the eligibility list. At most it means that the Board may not consider those lower on the list before considering those higher up." 599 F. 2d at 801.

That this is also the principal holding in the *Maiter* decision becomes fairly obvious wherein the Illinois Appellate Court, in attempting to resolve the provisions of Section 34-8.2 of the School Code which provides for such community input with its decision, states as follows at page 9 of the slip opinion:

> "If the board must make ten appointments from the eligibility list in a certain month, the local nominating committees can interview, the *next* ten persons on the list

> and relay their *preferences* to the board. In this manner, not only is the board complying with the statutory requirement of rank order appointment, but it can also consider the particular needs of the individual school in making an appointment." (Emphasis supplied.)

Thus, *Maiter* decided the priority of consideration of principalship candidates, but not their entitlement to promotion.

Despite the foregoing, the court in *Maiter* gratuitously decided to "decline to concur" with the Court of Appeals holding in *Webster*. Yet a careful review of the *Maiter* decision will fail to reveal anywhere that it was specifically decided that the phrase "for merit only" creates *an entitlement to a principalship* under Illinois law. The court in *Maiter* ignored a significant portion of the Court of Appeals' opinion in *Webster* which is as follows:

> "There is no indication that the Board of Education is merely a formalistic 'rubber stamp' in the promotion process, which Webster's argument would require. Rather, there is every indication that, whatever the order it must consider them in, the Board of Education as a separate entity is to have the final word and power of promotion or denial over those candidates who have been certified to it by the Board of Examiners. The statute states that promotions shall be made by the Board, and by no other. That they are only to be made for merit and not for patronage reasons surely does not prevent the Board from exercising its judgment against the merits of a given applicant. There is thus no indication in Illinois law that possession of a certificate from the Board of Examiners means anything more than that one is to be placed on the eligibility list and considered at the appropriate time by the Board of Education. Claims of entitlement to promotion sufficient to evoke constitutional protection must be based on a surer footing." (Footnote omitted). 599 F. 2d at 801.

Nothing in *Maiter* alters that reasoning. As it did formerly, Webster's argument after *Maiter* still requires the Board to be nothing more than a " 'rubber stamp' in the promotion process." As we have previously stated, under such a scheme, once

a person became certificated he would have the right to a principalship no matter what crimes he had committed or misconduct he had engaged in between the time of certification and actual appointment. Under plaintiff's theory the Board would have no alternative but to appoint the candidate a principal unless it provided him with more due process safeguards than are called for under Illinois law for the first three years after his appointment (Ill. Rev. Stat., ch. 122, § 34-84). Obviously, the court in *Maiter* did not have before it the situation involved in this case. The Court of Appeals correctly chose to follow well-established state law which acknowledges that the School Code authorizes the exercise of discretionary judgment by the Board in the appointment of principals. Thus, the decision in *Maiter* does not alter the appropriate reasoning applied in Webster, nor does it require any change to be made in its holding. Contrary to Webster's contention, the Court of Appeals did not attempt to decide the issue in *Maiter* and correctly found that it did not need to await the holding therein because it was not dispositive of the property right question involved in *Webster*.

II.

THE DOCTRINE OF ABSTENTION IS INAPPLICABLE.

Petitioner first incorrectly contends that the Court of Appeals in interpreting state law "usurped" the authority of the State Courts (P. 24). It has long been established that a federal court having jurisdiction has the power to determine questions of state law, even though not settled by any state decision. *Siler* v. *Louisville & N. R. Co.*, 213 U. S. 175, 53 L. Ed. 753, 29 S. Ct. 451 (1909); also see, *e.g.*, *Meredith* v. *Winter Haven*, 320 U. S. 228, 88 L. Ed. 9, 64 S. Ct. 7 (1943); *Doud* v. *Hodge*, 350 U. S. 485, 100 L. Ed 577, 76 S. Ct. 491 (1956). Thus, the determinations of state law were appropriate by both the Court of Appeals and the trial court.

Petitioner next implicitly maintains that the Court of Appeals should have abstained from deciding this case until the Illinois Appellate Court decided the *Maiter* case (pp. 24-26). It is important to note that none of the parties attempted to invoke the doctrine of absention in either the trial court or the Court of Appeals. Petitioner was obviously aware of the pendency of the state case, even though he was not a party, since he had the trial court's decision in *Maiter* admitted in evidence. The fact that parties have not seasonably invoked the doctrine militates against its application. *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U. S. 324, 12 L. Ed. 2d 350, 84 S. Ct. 1293 (1964).

The mere presence of what petitioner contends to be a doubtful issue of state law does not alone justify application of the doctrine of abstention. *Baggett* v. *Bullitt*, 377 U. S. 360, 12 L. Ed. 2d 377, 84 S. Ct. 1316 (1964). Only exceptional circumstances, not present in this case, would warrant the application of the doctrine and the non-exercise of the jurisdiction conferred. *Meredith* v. *Winter Haven*, 320 U. S. 228, 88 L. Ed. 9, 64 S. Ct. 7 (1943). Thus, it was not only appropriate, but the fulfillment of its duty for the Court of Appeals to decide the limited question of state law involved herein.

III.

BOARD OF EDUCATION'S CONSIDERATION OF EVENTS AND CIRCUMSTANCES RESULTING IN CRIMINAL PROCEEDINGS AGAINST A CANDIDATE FOR A PRINCIPALSHIP IS APPROPRIATE IN ITS DETERMINATION OF THAT PERSON'S FITNESS FOR THE POSITION.

Petitioner incorrectly contends that the Court of Appeals presumed him guilty of criminal conduct. In support of that contention he incredibly asserts that "there is not one shred of credible evidence in the record to indicate that the property seized from Mr. Webster's home was stolen property."

The motion to suppress filed in the state criminal court was directed to the illegal seizure of a ring from plaintiff's apartment. That ring was highly identifiable since it was the jewelry store owner's personal wedding band which had been personally made by him. It was identified by the police as having been one of the rings taken in the robbery of the jewelry store. It and another ring were in a jeweler's envelope with a jeweler's notations written on the front. That envelope was found in plaintiff's coat pocket.

What had led the police to plaintiff in the first place was that an admitted participant in the robbery told them that he and an accomplice had contacted a "Douglas Weber" at Douglas Webster's unlisted telephone number for disposal of the stolen property. The accomplice was one of plaintiff's former pupils, the plaintiff at that time having been a teacher of inmates at the Cook County Jail. The physical description of the person who had received the stolen property and the description of his automobile matched the plaintiff and his automobile.

It was these facts, not merely the fact of his arrest and indictment, which were communicated to the Board and from which most of its members determined that plaintiff was unfit to be a principal. The Board had not "presumed" plaintiff

guilty of criminal conduct but had determined from the facts which they had heard that, in the words of the trial court, he ". . . was not a person to be trusted with the important responsibility of being a principal of a school in the City of Chicago."

Likewise, the Court of Appeals made no such presumption of guilt. The footnote to its opinion which petitioner quotes in his argument (P. 26) is an addendum to its determination that it was appropriate for the Board to consider the ". . . events and circumstances leading up to and surrounding an arrest and subsequent indictment" and concluded that ". . . the occurrence of an arrest does not itself render such consideration impermissible." *Webster*, 599 F. 2d at 802, (P. 30a). That the Court of Appeals determined that it was appropriate for the Board to consider such facts is far from the invocation of a presumption of guilt.

CONCLUSION.

On the basis of the above and foregoing reasons and authorities, it is respectfully requested that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-765

DOUGLAS WARREN WEBSTER,

Petitioner,

VS.

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OBJECTIONS TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Respondents respectfully withhold their consent and object to the motion of the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. for leave to file its brief *Amicus Curiae* in support of Douglas Webster's Petition for Writ of Certiorari for the reasons that the *amicus* brief seeks to raise issues that were either not presented in the courts below, are not raised in the Petition for Writ of Certiorari, or are based upon erroneous facts.

The sole question presented for review as stated in Webster's Petition is whether he was deprived of a constitutionally protected property right by the Board of Education's denial of his appointment to a principalship. The *amicus* brief argues the following issues: (1) alleged interference with Webster's Fourth Amendment right to suppress illegally obtained evidence, which was never raised below, even in the complaint; (2) alleged denial of due process on the basis of arrest which is essentially a liberty interest issue (see Petition, p. 27, fn. 1), rejected by the Court of Appeals and not raised as an issue in the Petition for Writ of Certiorari; and (3) the alleged violation of the right to be considered for employment in a racially neutral manner pursuant to Title VII of Civil Rights Act of 1964, which is a racial discrimination claim rejected by both the trial court and the Court of Appeals and specifically not raised as an issue in Webster's Petition.

All of *amicus*' contentions are based on incorrect inferences as to the facts of this case. Neither of their stated positions jibe with the record, *i.e.*, that the Board ". . . construed the exercise of his Fourth Amendment right as evidence of poor moral character . . ." and, that the Board ". . . denied him an opportunity to be considered for a principalship based solely on the fact of his arrest and the subsequent suppression of illegal evidence." (Motion for Leave, etc., page 2). More than the mere fact of arrest was considered by the Board. In its consideration of petitioner for a principalship, the Board considered the events and circumstances leading up to and surrounding his arrest and subsequent indictment (R. B. 9-13, 32-33).[1] Nothing in the record supports the assertion that any member of the Board construed the mere exercise of his Fourth Amendment right as evidence of poor moral character.

1. "R. B." refers to Brief in Opposition to Petition for Writ of Certiorari filed on behalf of Respondents with this Court.

For the foregoing reasons, Respondents respectfully submit that the motion to file the brief *Amicus Curiae* should be denied. In the event this Court grants the motion, Respondents intend thereafter to file a response to the *amicus* brief.

Respectfully submitted,

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